

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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VISION BIOSYSTEMS (USA)  
TRADING INC.,

Plaintiff,

v.

VENTANA MEDICAL SYSTEMS, INC.,

Defendant.

U.S. DISTRICT COURT  
DISTRICT OF MASS.

Civil Action No. 03-CV-10391-GAO

VENTANA MEDICAL SYSTEMS, INC.,

Plaintiff,

v.

VISION BIOSYSTEMS INC.,

Defendant.

Civil Action No. 05-CV-10614-GAO

**PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS  
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT  
OF NON-INFRINGEMENT BASED ON COLLATERAL ESTOPPEL**

Plaintiff Vision Biosystems, Inc., formerly known as Vision Biosystems (USA) Trading Inc. ("Vision"), respectfully submits this Statement of Undisputed Facts, pursuant to Local Rule 56.1, in support of its motion for summary judgment of non-infringement of U.S. Patent No. 6,352,861 (the "'861 patent").

The following material facts are undisputed and demonstrate that Vision is entitled to summary judgment. Citations are provided solely as a convenience to indicate where support for the undisputed fact can be found. The citations form no part of the undisputed facts.

1. The bar code and OCR versions of the Vision Bond™ System (“Vision Bond™ System”) use identical means for applying reagents to the slides. Barrow Dec. ¶¶2-10.

2. In neither Vision Bond™ System is reagent dispensed directly from a reagent container onto a slide. Barrow Dec. ¶¶2-10.

3. In the Vision Bond™ System, (1) a robotic arm moves a pipette to a position above the reagent container; (2) the pipette aspirates reagent from the reagent container; (3) the robotic arm moves the aspirated reagent from a position above the reagent container to a position above the slide<sup>1</sup>; and (4) the pipette releases the reagent onto the slide. Barrow Dec. ¶¶2-6, 8-10.

4. In the Vision Bond™ System, so-called “bulk reagents” are applied to the slides by a sip-and-spit method very similar to that used to apply the staining reagents. Bulk reagent is aspirated from the appropriate reagent container into an electromechanically activated syringe. This is the “sip” step. Bulk reagent is then expelled from the syringe through tubing to the same pipette on the robotic arm that is used for applying staining reagents. The pipette is positioned over the appropriate slide and bulk reagent is expelled onto the slide. This is the “spit step.” Barrow Dec. ¶7.

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<sup>1</sup> For some reagents an intermediate mixing step is employed. That step involves first depositing reagents from different reagent containers into a mixing container. The robotic pipette then transfers the resulting mixed reagents to the appropriate slides. Barrow Dec. ¶6.

Dated: October 6, 2005

Respectfully submitted,

By: 

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